

**REMARKS**

**I. Status of Claims**

Claims 121-122, 124, 127, 129, 131-132, 137, 143-144, 147, 153, 157-158, 161, 166, 169-170, 172, 177-180, 183, 218-219, 221, and 223 are currently pending in this application. Claims 92-93, 97, 102-104, 113, and 115-120 are cancelled herein. Claims 121, 137, 143, 147, 153, 157, 161, 166, 169-170, 172, 177-178, 183, 218-219, 221, and 223 have been amended. Claim 121 has been amended to be in independent form by incorporating the limitations of claim 92 upon which it previously depended. Claims 137, 143, 147, 153, 157, 166, 169-170, 172, 177-178, and 183 have been amended to depend on claim 121 rather than claim 92 in view of the cancellation of claim 92. Claims 161, 218-219, 221, and 223 have been amended to further define that which Applicants regard as their invention, and support for the amendments can be found throughout the specification and claims as originally filed, including original claim 121.

Additionally, the specification has also been amended to change the title of the application to more distinctly point out that which Applicants presently claim.

No new matter has been introduced by these amendments, nor do the amendments raise new issues or necessitate the undertaking of any additional search of the art by the Office. These amendments are made without prejudice or disclaimer, and Applicants expressly reserve the right to pursue the subject matter cancelled herein in a continuation application.

## **II. Information Disclosure Statements**

Applicants thank the Office for acknowledging that all the references on the IDS Form PTO/SB/08 submitted November 8, 2004, have been considered.

Additionally, Applicants have filed a Supplemental Information Disclosure Statement concurrently with this Reply. Applicants respectfully request that the Office consider each reference cited in this Supplemental IDS and kindly provide an initialed copy of the Form PTO/SB/08 indicating that consideration. In light of the Office's past representation, if the Office strikes-through the references on the provided form, Applicants will assume that the Office considered the references but struck them out so they would not be listed on the face of the issued patent. If the Office believes that any references are improperly cited, however, and strikes-through the reference on the provided Form for that reason, Applicants request that the Office specifically so indicate and provide a citation to a regulation showing that the citation or submission was improper.

## **III. Rejections Under 35 U.S.C. § 112, First Paragraph**

The Office has rejected claims 92-93, 97, 102-104, 113, 115-122, 124, 127, 129, 131-132, 137, 143-144, 147, 153, 157-158, 161, 166, 169-170, 172, 177-180, 183, 218-219, 221, and 223 under 35 U.S.C. § 112, first paragraph for failing to comply with the written description requirement. The Examiner alleges that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors were in possession of the claimed

invention at the time the application was filed. Office Action at p. 3. Applicants respectfully traverse this rejection for the reasons set forth below.

Possession is the cornerstone of the written description requirement: “the test for compliance with § 112 has always required sufficient information in the original disclosure to show that the inventor possessed the invention at the time of the original filing.” *Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1320 (Fed. Cir. 2003). An applicant can show possession by pointing out adequate or sufficient description for the claims in the original specification, as would be understood by one of ordinary skill in the art. See MPEP § 2163(I). Furthermore, possession can be demonstrated by reference to a properly incorporated U.S. patent. See 37 C.F.R. § 1.57(c) and MPEP § 608.01(p) (both stating that information to fulfill the written description requirement may be properly incorporated by reference from a U.S. patent). Thus, support in the originally filed specification, including via incorporation by reference, necessarily shows that the inventor had possession of the claimed subject matter at the time the original application was filed.

A. Hetero Atom Group

The Office asserts that “[t]he specification gives no guidance” to the skilled artisan as to which polymers are encompassed by the term “at least one hydrocarbon-based repeating unit comprising at least one hetero atom” and “also satisfies the criteria of claims 93, 97, 102-104, 113, 115-118, and 120 wherein the hetero atom group is chosen from carbamate groups, urea groups and said polymer skeleton is chosen from polyurethane skeletons, polyurea skeletons and polyurea-polyurethane skeletons.” Office Action at p. 3. Although Applicants disagree with the Office, this rejection has

been rendered moot in view of the cancellation of claims 93, 97, 102-104, 113, 115-118, and 120. Therefore, Applicants respectfully request that this rejection be withdrawn.

B. R<sup>3</sup> Group and "Organic Groups"

The Office also asserts that there is no description in the specification for the polyamide of formula (I) wherein R<sup>3</sup> is chosen from organic groups comprising atoms chosen from carbon atoms, hydrogen atoms, oxygen atoms, and nitrogen atoms with the proviso that R<sup>3</sup> comprises at least 2 carbon atoms. Office Action at p. 4. The Office asserts that the specification only describes specific moieties and "not when the organic groups comprise atoms chosen from carbon, hydrogen, and nitrogen or carbon, hydrogen, oxygen, and nitrogen." *Id.*

The specification clearly contains sufficient support for the organic groups possible for the R<sup>3</sup> groups of formula (I) on at least pages 12-14. At page 13, lines 6-9, Applicants explain that the R<sup>3</sup> group may be chosen from organic groups in part comprising at least two carbon atoms. Page 14, lines 10-19, then gives concrete and specific examples of possible R<sup>3</sup> groups: C<sub>2</sub> to C<sub>36</sub> hydrocarbon-based groups and polyoxyalkylene groups. The same paragraph also defines specific types of hydrocarbon-based groups and provides examples thereof.

Moreover, page 12, lines 9-10, specifically incorporates by reference U.S. Patent No. 5,783,657 ("the '657 patent") for when the at least one heteropolymer is at least one polyamide polymer of formula (I). See 37 C.F.R. § 1.57(c); MPEP § 608.01(p) (both stating that information to fulfill the written description requirement may be properly incorporated by reference from a U.S. patent). The '657 patent further clearly describes

the organic groups possible for the  $R^3$  groups of formula (I) to one of ordinary skill in the art in at least column 6, line 9 to column 7, line 14, and specifically column 6, lines 9-65.

Additionally, the Office states that the expression at issue could encompass a "myriad" of compounds and is only an "invitation to experiment." Office Action at p. 5. Applicants do not deny that the claim is broad; however, as explained above, the broad subject matter is adequately described and that description satisfies the written description requirement. Regarding the Office's "invitation to experiment" comment, the Office has not pointed to any evidence establishing that the polymers at issue are so unpredictable that one skilled in the art would have any trouble envisioning the breadth that Applicants describe. There is, therefore, no basis of record to support the Office's apparent conclusion that Applicants did not possess the invention as claimed but merely invited others to experiment to achieve that invention.

In light of the description in pages 12-14 of the application, taken together with the disclosure of the '657 patent, Applicants assert that the claimed recitation of  $R^3$  groups of formula (I) has adequate support in the original specification to satisfy the written description requirement. Because the specification contains adequate written description for these organic groups, Applicants respectfully request this rejection be withdrawn.

C.  $R^4$  Group and "Heterocyclic Structure"

The Office also asserts that there is no description in the specification for when the nitrogen atom to which both  $R^3$  and  $R^4$  are bonded forms part of a heterocyclic structure defined in part by  $R^4$ -N- $R^3$  and "there is no support in the specification for heterocyclic rings." Office Action at p. 4.

The instant specification, however, clearly contains sufficient support for heterocyclic structures and ring systems in at least the paragraphs beginning on page 10 through the fourth full paragraph on page 13-14. Specifically, lines 10-12 on page 13 explains that the  $R^4$  group of formula (I) is chosen from one of a hydrogen atom, a  $C_1$  to  $C_{10}$  alkyl group, and direct bonds to another group chosen from  $R^3$  and another  $R^4$ . The paragraph further explains that when the  $R^4$  group is a direct bond, heterocyclic ring systems are possible that are defined in part by  $R^4$ -N- $R^3$ . Specification at p. 13, Ins. 10-15. Moreover, page 12, lines 9-11, specifically incorporates by reference U.S. Patent No. 5,783,657 ("the '657 patent") for when the at least one heteropolymer is at least one polyamide polymer of formula (I). The '657 patent, in at least column 6, line 9 to column 7, line 14, clearly describes to one of ordinary skill in the art the heterocyclic ring systems and structures possible with the  $R^4$  groups of formula (I), including that  $R^4$  may be a direct bond to at least one group chosen from  $R^3$  and another  $R^4$  such that when said at least one group is chosen from another  $R^4$ , the nitrogen atom to which both  $R^3$  and  $R^4$  are bonded forms part of a heterocyclic structure defined in part by  $R^4$ -N- $R^3$ . See, e.g., '657 patent, column 4, lines 40-43<sup>1</sup>. In light of the description beginning on page 12 through page 14 of the application, taken together with the disclosure of the '657 patent which is properly incorporated by reference, Applicants assert that the recitation of heterocyclic structures for the  $R^4$  groups of formula (I) has adequate support in the original specification to satisfy the written description requirement.

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<sup>1</sup> Applicants note for the Office's convenience that in the '657 patent,  $R^4$  is referred to as  $R^{3a}$ .

Additionally, the Office again states that the expression at issue could encompass a “myriad” of compounds and is only an “invitation to experiment.” Office Action at p. 5. As set forth above, Applicants do not deny that the claim is broad; however, the broad subject matter is adequately described and that description satisfies the written description requirement. There is, therefore, no basis of record to support the Office's apparent conclusion that Applicants did not possess the invention as claimed but merely invited others to experiment to achieve that invention. Accordingly, Applicants respectfully request that the rejection be withdrawn.

#### **IV. Rejections Under 35 U.S.C. § 112, Second Paragraph**

The Office has rejected claims 92-93, 97, 102-104, 113, 115-122, 124, 127, 129, 131-132, 137, 143-144, 147, 153, 157-158, 161, 166, 170, 172, 177-180, 183, 218-219, 221, and 223 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention. Applicants respectfully traverse this rejection for the reasons set forth below.

In determining whether the claims are sufficiently definite to comply with 35 U.S.C. § 112, second paragraph, the M.P.E.P. instructs that “[t]he essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity.” M.P.E.P. § 2173.02. Moreover, applicants are allowed “some latitude in the manner of expression and the aptness of terms” such that the Office’s inquiry is not to “whether more suitable language or modes of expression are available,” but whether the

language is definite in light of the content of the application, the teachings of the prior art, and the claim interpretation that may be given by one of ordinary skill in the art. *Id.* Applicants submit that the language in the rejected claims meets this threshold test for definiteness, as explained below.

A. Polymer

The Office asserts that the same three claim expressions discussed above: (i) "at least one hydrocarbon-based repeating unit comprising at least one hetero atom wherein the hetero atom group is chosen from carbamate groups and urea groups and said polymer skeleton is chosen from polyurethane skeletons, polyurea skeletons and polyurea-polyurethane skeletons;" (ii) " $R^3$  is chosen from organic groups comprising atoms chosen from carbon atoms, hydrogen atoms, oxygen atoms, and nitrogen atoms with the proviso that  $R^3$  comprises at least 2 carbon atoms"; and (iii) "when the nitrogen atom to which both  $R^3$  and  $R^4$  are bonded forms part of a heterocyclic structure defined in part by  $R^4-N-R^3$ ", are without metes and bounds. The Office asserts that the specification does not define these compounds.

Although as pointed out above, Applicants have cancelled certain claims rendering the Office's rejection regarding point (i) moot, with regard to points (ii) and (iii), Applicants submit that the language in the rejected claims meets this threshold test for definiteness. These expressions are known and used in the cosmetic art, and are in fact clear from the specification. As detailed above at pages 20-23, the specification clearly sets forth each of these expressions in a manner such that one of skill in the art, reading the application, would understand the scope of the expressions in light of those



disclosures. Therefore, the expressions do not render the claims indefinite, and Applicants respectfully request the withdrawal of this reason for rejection.

**B. Additional Fatty Material**

The Office asserts that the expression “additional fatty material which is selected from gums, fatty materials pasty at ambient temperature and resins” is without metes and bounds. Office Action at p. 6. Although the Office failed to expound on the basis of this rejection, Applicants understand this rejection to be based on the Office’s implication that “fatty materials which are pasty at ambient temperature” are not defined, and expressly request clarification on the record if this understanding is not correct.

The specification, however, clearly defines these materials at pages 25-27, in the section entitled “Pasty fatty substance.” Not only do Applicants provide examples of such materials in this section (see Specification at p. 26, Ins. 6-20), but they also set forth the specific criteria for determining whether a material qualifies as pasty at ambient temperature. See Specification at p. 25, Ins. 11-18. Thus, one of skill in the art, reading the application, would understand the scope of the expression “fatty materials pasty at ambient temperature” in light of those disclosures, and the expression therefore does not render the claims indefinite. Therefore, Applicants respectfully request the withdrawal of this reason for rejection.

**V. Rejections Under 35 U.S.C. § 102**

The Office has rejected claims 92-93, 97, 102-104, 113, 115-122, 124, 127, 129, 131-132, 137, 143-144, 147, 161, 166, 169-170, 172, 177-180, 218-219, 221, and 223 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,148,125

("Strianse"). See Office Action at pp. 6-8. Although some of the rejected claims have been amended and cancelled as set forth above, Applicants respectfully traverse this rejection insofar as it applies to the currently pending claims.

As has often been made clear by the Federal Circuit, anticipation requires that each and every claim limitation be met by a single reference. *Glaxo v. Novopharm, Inc.*, 34 U.S.P.Q.2d 1565 (Fed. Cir. 1995). Moreover, the reference must clearly and unequivocally disclose the claimed composition to one of ordinary skill in the art "without any need for picking, choosing and combining various disclosures." *In re Arkley*, 455 F.2d 586, 587, 172 U.S.P.Q. 524, 526 (C.C.P.A. 1972).

In the present case, the Office asserts that the polyamides disclosed in Strianse are the same as the claimed structuring polymers and the lanolin alcohols and ethoxylated lanolin alcohols of Strianse read on the claimed pasty fatty substance.

The presently claimed structuring polymer, however, is not disclosed in Strianse. The polymers disclosed in Strianse, see, e.g., column 2, lines 55-58, are not ester-terminated and, therefore, are not species of the polymer of formula (I). Therefore, Strianse does not disclose every claim limitation of the present invention. In view of the amendments and the foregoing remarks, the rejection is rendered moot, and Applicants respectfully request withdrawal of this rejection.

Additionally, Applicants object to the Office's "claim construction" set forth at pages 6-8 of the Office Action. Applicants note that the Office Action contains numerous characterizations of the invention and the cited art with which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Office Action.

Applicants particularly disagree with the Office's assertion that Versamid<sup>®</sup> is a polymer of claimed formula (I). While the Office requests that Applicants provide a product brochure showing the structure of the polymer Versamid<sup>®</sup> if they contend otherwise, Applicants have not been able to obtain the structure of the Versamid<sup>®</sup> polymer. Instead, Applicants direct the Office's attention to Strianse, see e.g., column 2, lines 55-58, and 3,645,705, see, e.g., column 2, lines 31-44, for information regarding this polyamide polymer. As explained above, on information and belief Versamid<sup>®</sup> is not a species of the polymer of formula (I) because it is not ester-terminated.

#### **VI. Rejections Under 35 U.S.C. § 103(a)**

The Office has rejected claims 92-93, 97, 102-104, 113, 115-122, 124, 127, 129, 131-132, 137, 143-144, 147, 153, 157-158, 161, 166, 170, 172, 177-180, 183, 218-219, 221, and 223 under 35 U.S.C. § 103(a) as being obvious over the combination of U.S. Patent Nos. 5,783,657 ("Pavlin") and 6,214,329 ("Brieva"), and Strianse. Although some of the rejected claims have been amended and cancelled as set forth above, Applicants respectfully traverse this rejection insofar as it applies to the currently pending claims for the reasons already of record and those set forth below.

In making a rejection under 35 U.S.C. § 103, the Office has the initial burden to establish a *prima facie* case of obviousness. See M.P.E.P. § 2143. To meet this burden, the Office must point to some objective teaching in the prior art, coupled with the knowledge generally available to one of ordinary skill in the art at the time of the invention, that would have motivated one of ordinary skill to combine reference teachings with a reasonable expectation of success. See M.P.E.P. §§ 2143.01 and

2143.02; *In re Fine*, 5 U.S.P.Q.2d 1596, 1598, 837 F.2d 1071, 1074 (Fed. Cir. 1988).

Both the suggestion and the reasonable expectation of success must be found in the prior art references, not in Applicants' disclosure. See *In re Vaeck*, 20 U.S.P.Q.2d 1438, 947 F.2d 488 (Fed. Cir. 1991). Applicants submit that the Office has not met either of these criteria with respect to the proposed combination of Pavlin, Strianse and Brieva, and therefore, has not established a *prima facie* case of obviousness.

The Office asserts that Pavlin discloses the claimed polymer (Office Action at p. 9), but has admitted that it does not teach at least one pasty fatty substance, wherein said at least one pasty fatty substance comprises at least one liquid fraction and at least one solid fraction at room temperature. May 5, 2004, Office Action at p. 4. The Office also asserts that Strianse teaches "the polymer (Versamid) useful as lipsticks" (Office Action at p. 9) and pasty fatty compounds. *Id.* at p. 7. Finally, the Office relies on Brieva for a teaching of volatile and non-volatile oil, preservatives, waxes, coloring agents, and amphiphilic compounds, in combination with gelling agents. *Id.* The Office asserts that the motivation to combine the ingredients from these various sources flows from the fact that these references are in the same cosmetic art and would expect the resultant product to have the properties disclosed therein. *Id.* at p. 10. Applicants disagree.

**A. The Office has not demonstrated the requisite suggestion or motivation to combine the references.**

The Office has failed to demonstrate some suggestion or motivation, either in the references themselves or in the knowledge generally available to those of ordinary skill in the art, to modify Pavlin and arrive at the present invention. While Strianse does disclose fatty acid esters and lanolin alcohols in a laundry list of optional ingredients, not

all fatty acid esters, including several of the compounds listed in Strianse, are pasty fatty substances as defined by the instant claims. The Office previously recognized that not all fatty acid esters are pasty fatty substances and explicitly noted that while Pavlin teaches fatty acid esters, it does not teach the “at least one pasty fatty substance, wherein said at least one pasty fatty substance comprises at least one liquid fraction and at least one solid fraction at room temperature” of Applicants’ claims. See Summary of January 14, 2003 Interview.

Even assuming, *arguendo*, that one of the numerous compounds listed in Strianse is a pasty fatty substance, the Office has not provided any specific motivation for one of ordinary skill in the art to choose any particular compound therein and add it to the compositions of Pavlin. Rather, the Office’s position is simply that because both references are directed to cosmetics, one of skill in the art would have been motivated to combine them. This, however, is not sufficient to satisfy the burden of establishing *prima facie* obviousness.

In fact, the Office has done nothing more than point to disclosure in each of Pavlin and Strianse of individual components of the present claims. Even though the individual components of the presently claimed invention may be found separately in the references of record, these separate disclosures do not defeat the patentability of the composition as a whole. Merely identifying each of the claimed elements in the prior art is not sufficient to establish a *prima facie* case of obviousness. As the Office is aware, the Federal Circuit has held that “[m]ost if not all inventions arise from a combination of old elements . . . . However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention.” *In re Kotzab*, 55

U.S.P.Q.2d 1313, 1316, 217 F.3d 1365, 1370 (Fed. Cir. 2000) (citations omitted). It is not sufficient to merely "find every element of a claimed invention in the prior art" and for the Office to "use the claimed invention itself as a blue print for piecing together elements." *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457, 149 F.3d 1350, 1357 (Fed. Cir. 1998) (citations and quotations omitted). Only in view of the instant specification would one find the requisite motivation to combine the references in such a manner as to arrive at the presently claimed invention. However, such hindsight analysis is improper under *Vaeck*, *supra*.

There is no specific suggestion of the desirability of the combination here, as discussed above. Accordingly, Pavlin and Strianse could not have provided any motivation for one of ordinary skill in the art to reach the presently claimed invention, and the rejection is improper for this reason alone.

**B. Brieva does not remedy the deficiencies set forth above, as it actually teaches away from the proposed combination.**

The fact as set forth above that there is no motivation to combine Pavlin and Strianse is not remedied by the addition of Brieva to the rejection. The overbreadth of the Office's alleged motivation to combine Pavlin, Strianse, and Brieva ignores chemical compatibility and formulating realities, and is evident upon examining the teachings of the references themselves. In particular, Brieva actually teaches away from incorporating a polymeric gelling agent, such as the polyamides disclosed in Pavlin and Strianse, into the composition. Brieva emphasizes throughout the disclosure that the composition includes a "**non-polymeric** gelling agent." See e.g., col. 1, ln. 64 to col. 2, ln. 3. In contrast, the polyamides of Pavlin and Strianse, being, of course, polymers by definition, are the very type of polymeric gelling agent Brieva clearly teaches against by

emphasizing non-polymeric gelling agents. This not a case where Brieva does not specify whether the gelling agent is polymeric or non-polymeric or states that either can be used. Rather, he explicitly only teaches exclusively the non-polymeric variety. That is the case even though Brieva's assignee, Revlon, is a sophisticated and significant player in the mascara market.

So, if it wasn't obvious to Brieva to include known polymeric gelling agents in his compositions, why would it have been obvious to one skilled in the art at the time of the present invention to so modify Brieva?

Applicants therefore respectfully submit that one of ordinary skill in the art would not have been motivated to combine the polyamide polymers of Pavlin and Strianse with Brieva, a reference that goes to great length to emphasize that the gelling agent incorporated therein is non-polymeric. In sum, that which teaches away cannot, by definition, provide the necessary motivation to combine that is required to establish a rejection under 35 U.S.C. § 103: "It is improper to combine references where the references teach away from their combination." M.P.E.P. § 2145 X.D.2. Nothing in the record provides any reason why one would have been motivated to modify a reference that uses only non-polymeric gelling agents with a polymeric gelling agent.

Furthermore, the Office has not even addressed, and thus has pointed to no reason, why one of skill in the art would have been motivated to extract the elements disclosed in Brieva and use them in the compositions of Pavlin and Strianse. Therefore, the rejection is improper and Applicants respectfully request that it be withdrawn.

**VII. Commonly Assigned Co-Pending Applications and Patents**

In the Submission under 37 C.F.R. § 1.114 filed on November 4, 2004, in this case, Applicants noted in Table 1 information regarding 37 copending applications, including the present application, and submitted copies of the pending claims as of that date for every case identified in Table 1. In the following Table 2, Applicants have noted one additional application that has been filed, and enclose herewith in Exhibit 1 a copy of the copending claims for that case. Furthermore, Applicants submit herewith, also in Exhibit 1, copies of the currently pending claims from the following copending applications, which claims have been amended since November 4, 2004: 09/685,577; 09/685,578; 09/733,896; 09/733,898; 10/012,052; 10/046,568; 10/047,987; 10/182,830; 10/198,931; 10/203,254; 10/203,374; 10/312,083; 10/413,217; 10/699,780; 10/746,612; 10/787,440; 10/990,475; and 10/993,430. Applicants submit these claims for the Office's convenience in evaluating any potential issues regarding statutory or obviousness-type double patenting.

Applicants also direct the Office's attention to U.S. Patent No. 6,761,881 B2, which issued to Isabelle Bara on July 13, 2004, and is assigned to L'Oréal. This patent is also related to the patents and co-pending applications identified in Table A below. A copy of the issued claims of this patent is also attached in Exhibit 1.



**Table 2**

Attorney Docket No.	U.S. Patent Application No.	U.S. Filing Date/ 371 (c) Date	Inventors	Title	Assignment Recorded (Reel, Frame, Date)	Publication, Date
06028.0047-00000	10/494,864	May 7, 2004	Didier CANDAU and Christèle GOMBERT	COMPOSITION CONTAINING AN AMINO ACID N-ACYLATED ESTER AND A POLYAMIDE STRUCTURED UV FILTER	Not yet filed/recorded	U.S. Published Application No. US 2005/0065251 A1, on March 24, 2005

**VIII. Conclusion**

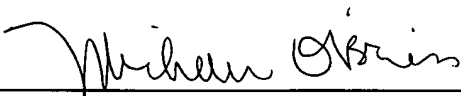
In view of the foregoing remarks, Applicants respectfully request the reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
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Dated: August 29, 2005

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